Supreme Court, U. S.
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No. 79-1801

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

LIBBEY-OWENS-FORD COMPANY,

Petitioner,

vs.

SHERRY EIRHART and EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Respondents.

REPLY OF PETITIONER, LIBBEY-OWENS-FORD COMPANY, TO BRIEF OF RESPONDENT, SHERRY EIRHART

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In her Brief in opposition to the Petition for Writ of Certiorari, respondent Sherry Eirhart states that "the question of whether a consent decree entered into between the EEOC and an employer bars a private action was recently resolved by this Court in *General*

Telephone Company v. EEOC, 48 U.S.L.W. 4513 (May 12, 1980), in accord with the decision of the Seventh Circuit in this case." (Eirhart Br. p. 2). However, the first paragraph of this Court's opinion in *General Telephone* states that "The issue in this case is whether the . . . (EEOC) may seek class-wide relief under §706(f)(1) of Title VII of the Civil Rights Act of 1964 (Title VII) without being certified as the class representative under Rule 23 of the Federal Rules of Civil Procedure." Nowhere does this Court even touch upon the issue raised in Libbey-Owens-Ford's Petition, whether a consent order, such as the Consent Order of February 3, 1971, is an interpretation or opinion of the EEOC so as to provide a defense to petitioner, Libbey-Owens-Ford, under §713(b) of Title VII.

This Court's holding in the *General Telephone* case is that Rule 23 does not apply to EEOC actions. The *General Telephone* case did not involve actions and procedures approved by the EEOC and contained in a consent order entered into with the EEOC, directing that the specific employment procedures be utilized by an employer. The *General Telephone* case did not address the issue of the substantive aspects of a consent judgment with the EEOC, i.e., whether a consent order, such as the Consent Order of February 3, 1971, directing an employer to utilize a specific hiring procedure approved by the EEOC, constitutes an interpretation or opinion of the EEOC as to that specific hiring procedure so as to provide a defense under §713(b) to the employer. It is submitted that the *General Telephone* case is not, therefore, as respondent Sherry Eirhart suggests, on page 2 of her Brief, "dispositive" of the issues raised in Libbey-Owens-Ford's Petition.

This Court should grant petitioner, Libbey-Owens-Ford's Writ of Certiorari to the Court of Appeals for the Seventh Circuit and decide the issues raised therein.

Respectfully submitted,

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Dated August 4, 1980